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HOUSE BILL 355

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO FINANCE; ENACTING THE MUNICIPAL ARENA FUNDING ACT;
AUTHORIZING MUNICIPALITIES TO REQUIRE VENDORS TO COLLECT A
SURCHARGE ON REVENUES ARISING FROM ACTIVITIES AT A MUNICIPAL
ARENA; PROVIDING LEGISLATIVE AUTHORIZATION FOR THE NEW MEXICO
FINANCE AUTHORITY TO PROVIDE FINANCING FOR A MUNICIPAL ARENA;
EXEMPTING RECEIPTS SUBJECT TO A SURCHARGE FROM THE GROSS
RECEIPTS TAX AND THE GOVERNMENTAL GROSS RECEIPTS TAX; DECLARING
AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 9 of this act may be cited as the "Municipal Arena
Funding Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

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1 (1) the costs of land for municipal arenas and
2 the costs of designing, purchasing, constructing, remodeling,
3 rehabilitating, renovating, improving, equipping, furnishing,
4 operating and maintaining municipal arenas have increased to a
5 level that local financial resources are inadequate to meet all
6 of the costs;

7 (2) functional and modern municipal arenas are
8 essential in retaining and attracting sporting events, concert
9 performances and other entertainment and recreational
10 performances to the state; and

11 (3) even after using financial resources,
12 municipalities need additional means to provide complete
13 funding for functional and modern municipal arenas.

14 B. The purpose of the Municipal Arena Funding Act
15 is to provide an additional method of accessing the capital
16 markets with the assistance of the authority to meet the need
17 for a complete funding package for functional and modern
18 municipal arenas.

19 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Municipal Arena Funding Act:

21 A. "arena lease revenues" means receipts, fees,
22 rentals or other charges paid to a municipality for the right
23 to use, operate or manage a municipal arena by any person,
24 corporation or other entity;

25 B. "arena surcharge" means a surcharge on tickets,

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1 parking, souvenirs, concessions, programs, advertising,
2 merchandise, corporate suites or boxes, broadcast rights and
3 all other products or services sold at or related to the
4 municipal arena or activities occurring at the arena;

5 C. "authority" means the New Mexico finance
6 authority;

7 D. "chief executive officer" means the mayor or
8 chief administrative officer of a municipality when designated
9 in writing by the mayor to perform duties required by the
10 Municipal Arena Funding Act;

11 E. "governing body" means the council, commission
12 or other group of elected officials of a municipality in which
13 the legislative authority of a municipality is vested;

14 F. "loan" means a loan or other financial
15 arrangement pursuant to which money is lent or otherwise made
16 available by the authority to a municipality to pay for some or
17 all of the costs of land for and designing, purchasing,
18 constructing, remodeling, rehabilitating, renovating,
19 improving, equipping and furnishing a municipal arena;

20 G. "loan payments" means all payments of principal,
21 interest, premiums, charges, expenses or other obligations
22 required to be paid by a municipality to the authority to repay
23 the loan;

24 H. "municipal arena" means an arena, including
25 land, buildings and related improvements, primarily designed

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1 and intended for performances of sporting events, concerts and
2 other entertainment and recreational events;

3 I. "municipality" means a city located in a class A
4 county with a population of more than two hundred thousand
5 according to the 2000 federal decennial census;

6 J. "vendor" means a person, corporation,
7 partnership or other entity, including a division or department
8 of a municipality, providing products or services sold at or
9 related to the municipal arena; and

10 K. "vendor contract" means a contract, agreement or
11 other written arrangement between a municipality and a vendor
12 pursuant to which the vendor provides products or services sold
13 at or related to the municipal arena.

14 Section 4. [NEW MATERIAL] AUTHORIZATION OF SURCHARGE--USE
15 OF PROCEEDS.--

16 A. A municipality may impose an arena surcharge by
17 majority vote of the governing body. If an arena surcharge has
18 been imposed, the municipality shall include an arena surcharge
19 in each vendor contract and each vendor contract shall be
20 signed by the chief executive officer.

21 B. Before establishing the amount of the arena
22 surcharge to be included in each vendor contract, the
23 municipality shall notify the authority in writing of the
24 proposed amount of the loan requested for the municipal arena
25 and of the proposed amount of the arena surcharge to be

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1 included in each vendor contract. The authority shall review
2 the proposed amount of the arena surcharge and shall make a
3 written recommendation to a municipality setting forth the
4 minimum amount of the arena surcharge to be set forth in the
5 loan and related documents. The minimum amount of the
6 surcharge shall not be less than five percent and may be any
7 higher percentage recommended by the authority or otherwise
8 established by the municipality.

9 C. After receipt of the written recommendation from
10 the authority, a municipality shall establish the amount of the
11 arena surcharge to be included in each vendor contract;
12 provided that the amount of the surcharge to be set forth in
13 the loan and related documents shall be at least the minimum
14 amount recommended by the authority.

15 D. Receipts from the arena surcharge may be used by
16 the municipality for all or any portion of:

- 17 (1) loan payments;
18 (2) costs of constructing, renovating,
19 operating, maintaining or improving the municipal arena; or
20 (3) costs of collecting and otherwise
21 administering the surcharge.

22 E. A municipality shall establish a fund for
23 construction, renovation, operation, maintenance and
24 improvement of a municipal arena for deposit of all receipts
25 from the arena surcharge that exceed the required loan payments

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1 and all receipts deposited in that fund shall be used for those
2 purposes for the costs of collecting and administering the
3 surcharge.

4 Section 5. [NEW MATERIAL] COLLECTION OF SURCHARGE--
5 REMITTANCE TO THE MUNICIPALITY.--

6 A. A vendor shall collect the arena surcharge on
7 behalf of the municipality and shall act as a trustee for the
8 vendor.

9 B. The arena surcharge shall be collected by
10 vendors from the users of products or services subject to the
11 arena surcharge. Users shall be charged separately for the
12 surcharge from the cost of the product or service subject to
13 the surcharge or the vendor shall institute accounting controls
14 or procedures sufficient to identify the amount of the
15 surcharge owed to a municipality for each sale, transaction or
16 exchange subject to the surcharge.

17 C. Receipts from the arena surcharge shall be
18 remitted by vendors to the treasurer of the municipality no
19 later than the tenth day of the month following collection of
20 the receipts. The treasurer of the municipality shall deposit
21 the receipts in a separate account and shall act as trustee of
22 the receipts on behalf of the authority so long as any loan is
23 unpaid.

24 Section 6. [NEW MATERIAL] AUDITS.--A municipality shall
25 provide by ordinance a method to either audit or otherwise

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1 ensure that vendors subject to the arena surcharge collect and
2 remit to the treasurer of the municipality the full amount of
3 the surcharge receipts due to the municipality.

4 Section 7. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

5 A. An action to enforce the imposition and
6 collection of an arena surcharge by a vendor may be brought by
7 a municipality.

8 B. A district court may issue an appropriate
9 judgment, order or remedy to enforce the provisions of a vendor
10 contract.

11 C. Any judgment issued by a district court
12 requiring arena surcharge receipts to be paid to a municipal
13 treasurer by a vendor shall also award interest at twelve
14 percent on past due amounts, attorney fees and costs to the
15 municipality.

16 Section 8. [NEW MATERIAL] AUTHORIZATION OF PROJECT.--

17 A. Pursuant to the provisions of Section 6-21-6
18 NMSA 1978, the authority may make a loan from the public
19 project revolving fund to a municipality to acquire land for
20 and to design, purchase, construct, remodel, renovate,
21 rehabilitate, improve, equip or furnish a municipal arena on
22 terms and conditions established by the authority.

23 B. Prior to receiving the loan, the governing body
24 shall approve the loan and related documents by an ordinance to
25 be adopted by a majority of the members of the governing body.

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1 The ordinance shall pledge the arena lease revenues and the
2 arena surcharge receipts to make the loan payments. In
3 addition to pledging the arena lease revenues and the arena
4 surcharge receipts for making loan payments, the ordinance
5 shall pledge legally available gross receipts tax revenues
6 distributed to a municipality pursuant to Section 7-1-6.4 or
7 7-1-6.12 NMSA 1978 in an amount satisfactory to the authority
8 and in an amount at least sufficient to make the loan payments.
9 An action shall not be brought questioning the legality of the
10 pledge of arena lease revenues, arena surcharge receipts and
11 gross receipts tax revenues, the ordinance, the loan, the
12 proceedings, the arena surcharge to be included in each vendor
13 contract or any other matter concerning the loan after thirty
14 days from the date of publication of the ordinance approving
15 the loan and related documents and pledging arena lease
16 revenues, arena surcharge receipts and gross receipts tax
17 revenues of a municipality to make the loan payments.

18 C. The legislature or a municipality shall not
19 repeal, amend or otherwise modify any law or ordinance that
20 adversely affects or impairs the arena surcharge or any loan
21 from the authority secured by a pledge of the arena lease
22 revenues, arena surcharge, receipts and gross receipts tax
23 revenues, unless the loan has been paid in full or provisions
24 have been made for full payment.

25 Section 9. [NEW MATERIAL] CUMULATIVE AND COMPLETE

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1 AUTHORITY.--The Municipal Arena Funding Act shall be deemed to
2 provide an additional and alternative method for obtaining
3 funding for a municipal arena, establishing the arena
4 surcharge, completing the acts authorized and shall be regarded
5 as supplemental and additional to powers conferred by those
6 other laws of the state and shall constitute full authority for
7 the exercise of powers granted, including the pledging of arena
8 lease revenues, arena surcharge receipts and gross receipts tax
9 revenues by the governing body to make loan payments to the
10 authority.

11 Section 10. A new section of the Gross Receipts and
12 Compensating Tax Act is enacted to read:

13 "[NEW MATERIAL] EXEMPTION--GROSS RECEIPTS TAX AND
14 GOVERNMENTAL GROSS RECEIPTS TAX--ARENA SURCHARGE.--Exempted
15 from the gross receipts tax and from the governmental gross
16 receipts tax are receipts subject to the arena surcharge
17 pursuant to the Municipal Arena Funding Act."

18 Section 11. LIBERAL INTERPRETATION.--The Municipal Arena
19 Funding Act, being necessary for the welfare of the state and
20 its inhabitants, shall be liberally construed to effect the
21 purposes of that act.

22 Section 12. SEVERABILITY.--If any part or application of
23 the Municipal Arena Funding Act is held invalid, the remainder
24 or its application to other situations or persons shall not be
25 affected.

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